

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3841

January 14, 2015

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining the operations of the Office of Refugee Resettlement (ORR). Specifically, the committee is investigating ORR operations relating to the management and treatment of unaccompanied alien children (UAC) from Latin America.

One aspect of the committee's investigation involves the review of materials documenting alleged abuses of children in the care and custody of ORR, an office of the U.S. Department of Health and Human Services (HHS). Over the last year, the *Houston Chronicle* has published several articles detailing such abuse, with citations to HHS reports obtained under the Freedom of Information Act (FOIA).¹

Upon learning of these reports in September 2014, the committee requested full and immediate access to all documentation describing such alleged abuse. Despite ongoing discussions and commitments by your staff, the committee has yet to receive the requested information.

¹ See, e.g., Susan Carroll, Crossing alone: Children fleeing to U.S. land in shadowy system, *Houston Chronicle* (May 24, 2014), available at: <http://www.houstonchronicle.com/news/investigations/article/Crossing-alone-Children-fleeing-to-U-S-land-in-5503127.php>; see also, e.g., Susan Carroll, Unaccompanied children in country illegally still lack federal protection, *Houston Chronicle* (May 29, 2014), available at: <http://www.houstonchronicle.com/news/houston-texas/houston/article/Unaccompanied-children-in-country-illegally-still-5514344.php>.

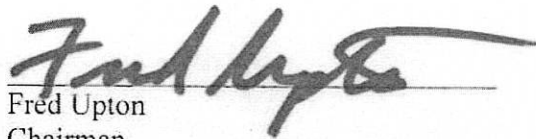
As you are aware, the exceptions contained in FOIA do not apply to requests from Congress or its committees.² Nonetheless, the committee appreciates and shares the Department's interest in protecting the identities of children who may have been subject to abuse.

Accordingly, I write to reiterate the committee's requests over the past several months for copies of all Serious Incident Reports and other documents in the custody or control of ORR, ORR grantees, and/or ORR contractors that may relate to allegations of the abuse of minors in ORR's care or custody at any point since, and including, 2011. To accommodate the concerns raised by the Department, the committee agrees to accept such information with the names of children redacted. However, the committee expressly reserves its right to obtain the redacted information at a future date.

I respectfully request that these documents be produced to the committee no later than Friday, January 23, 2015. If all documents cannot be produced by this date, I respectfully request that you provide a detailed summary by Friday, January 23, 2015, of documents which are not being produced and the proposed dates by which those documents will be made available to the committee.

I appreciate your timely cooperation in this matter. Should you have any questions or concerns about this request, please contact Charles Ingebretson or Emily Newman with the Majority Staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman

cc: The Honorable Frank Pallone, Jr., Ranking Member

² See 5 U.S.C. § 552(d) ("This section is not authority to withhold information from Congress."); *see also*, e.g., *Murphy v. Dep't of the Army*, 613 F.2d 1151, 1158 (D.C. Cir. 1979) ("Congress, whether as a body, through committees, or otherwise, must have the widest possible access to executive branch information if it is to perform its manifold responsibilities effectively.").

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
February 11, 2016

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell,

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining the operations of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS). The Committee is specifically focused on ORR's management and treatment of unaccompanied children while in its custody and in placing children with sponsors.

Since 2011, over 129,000 children have been apprehended at the border and placed in temporary ORR custody.¹ In fiscal year 2014, the number of unaccompanied children increased dramatically as over 57,000 children were placed in the care of ORR, and numbers soared once again this fall.² In the last three months, 17,370 unaccompanied children were apprehended at the Southwest border and placed into the custody of ORR.³ In comparison, 7,989 children were apprehended and placed in custody during the same time period last year.⁴

When unaccompanied children are apprehended at the border by Customs and Border Patrol officials, they are soon placed into the temporary custody of ORR. ORR is charged with caring for the child, and finding a suitable "sponsor," preferably a family member, to take custody of the child until the child must appear for an immigration proceeding. News reports

¹ Administration for Children and Families, Department of Health and Human Services, Fact Sheet, (last visited Jan. 28, 2016), *available at*: https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf.

² *Id.*

³ United States Border Patrol, Southwest Border Sectors, Family United and Unaccompanied Alien Children Apprehensions FY 16 through December, *available at*: <http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20-%20Dec.pdf>.

⁴ *Id.*

have called into question the health and well-being of unaccompanied children both while in the custody of ORR, and after ORR places children into the homes of sponsors. For example, a recent article in *The Washington Post* tells the story of an unaccompanied child placed with sponsors in central Ohio, who were later discovered to be human traffickers who forced the child to work 12 hours a day on an egg farm.⁵ The *Associated Press* highlighted six separate instances of abuse, including:

- A 14-year-old Honduran girl whose stepfather forced her to work over a period of several months at cantinas in central Florida where women drink, dance and sometimes have sex with patrons.
- A 17-year-old from Honduras sent to live with an aunt in Texas, who forced her to work in a restaurant at night and clean houses on weekends, and often locked her in the home.
- A 17-year-old Guatemalan placed with a friend's brother in Alabama who vowed to help him attend school, but instead was made to work in a restaurant for 12 hours a day to earn rent.
- A Central American teen placed with a family friend who forced her to cook, clean and care for a group of younger children in a Florida trailer park.
- A Honduran teen placed with a sponsor in New York City who was so physically abusive that she ran away and sought refuge in a shelter.
- A 14-year-old from Guatemala, who was sent to a sponsor's tiny apartment in Los Angeles where nine people lived, and was held for three weeks, deprived of food, and sought sanctuary at a nearby church.⁶

Federal law places responsibility for the unaccompanied child's health and well-being with HHS. The law states that "an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being."⁷ Further, the law prescribes that HHS must verify the custodian's identity and relationship to the child, if any, and find that the individual "has not engaged in any activity that would indicate a potential risk to the child" before placing the child with that individual.⁸ However, the Committee is concerned that relaxed standards and an emphasis on expediency have placed unaccompanied children in harms' way.

ORR officials acknowledged that, in recent years, their office relaxed standards for background checks of potential sponsors, including rolling back fingerprinting requirements, no longer requiring original copies of birth certificates, not completing forms requesting sponsor's

⁵ Abbie VanSickle, *Overwhelmed federal officials released immigrant teens to traffickers in 2014*, THE WASHINGTON POST, Jan. 26, 2016.

⁶ Garance Burke, *Feds' Failures Imperil Migrant Children*, THE ASSOCIATED PRESS, Jan. 25, 2016.

⁷ 8 U.S.C. 1232(c)(3)(A).

⁸ 8 U.S.C. 1232(c)(3)(A).

personal and identifying information, and eliminating FBI criminal history checks.⁹ Thus, it appears that ORR was derelict in its duty to protect vulnerable children and ensure their safety from nefarious individuals seeking to exploit them. Further, the Committee is concerned that ORR may have relaxed sponsor background checks, such as fingerprinting requirements, long before the surge of unaccompanied children in the summer of 2014, and that more children may be at risk.

In addition to grave concerns with ORR's placement process, the Committee is alarmed that ORR fails to ensure children are being cared for properly after they are placed with a sponsor. ORR only checks on children after they are placed with sponsors in a small number of cases. This leaves children without advocates and useful resources when they are placed in homes that are not suitable. In one story recounted in a recent *Associated Press* article, a social worker visited an apartment complex, where the government had sent more than a dozen children to live, to see if it was suitable for a new placement.¹⁰ According to Hilary Chester, associate director of anti-trafficking programs at U.S. Council of Catholic Bishops, the social worker found nothing but an empty apartment.¹¹ Ms. Chester was concerned "it could have been a front to have those kids released so that traffickers could get them into the workforce," and believes that "no one knows where the kids are."¹²

When asked about ORR's services after children are released to sponsors, ORR officials told committee staff that ORR's legal responsibility ended once a child was placed with a sponsor. ORR officials said that ORR had no statutory authority to take action post-placement, but ORR officials were unable to explain why or cite any statute limiting ORR's authority.¹³ Despite multiple requests, HHS has still not explained ORR's legal position to committee staff.

To better understand the issues surrounding the care of unaccompanied children in ORR's custody, please provide the following documents and information:

1. Why did HHS relax standards for background checks, fingerprinting and identity verification of potential sponsors? Explain all policy changes regarding placement of unaccompanied children with sponsors, and the dates of those changes, and the reasons for those changes, from January 2007 to the present.
2. Did HHS notify Congressional appropriators and committees of jurisdiction when policy changes were made concerning potential sponsors for unaccompanied children? Explain.
3. Has HHS changed any policies or standards regarding the immunization or communicable disease testing for unaccompanied children? If so, explain all policy changes, and the dates of those changes, and the reasons for those changes, from January 2007 to the present.

⁹ Garance Burke, *Feds' Failures Imperil Migrant Children*, THE ASSOCIATED PRESS, Jan. 25, 2016.

¹⁰ *Id.*

¹¹ *Id.*

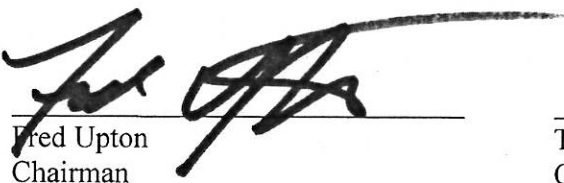
¹² *Id.*

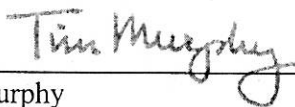
¹³ Committee staff briefing with HHS ORR, December 16, 2015.

4. Have the job duties or requirements for child welfare officers or other staff within URM/ORR charged with monitoring the custody or care of children at ORR changed or evolved due to ORR policy changes? Explain any changes made, from January 2007 to the present.
5. How often has HHS terminated a sponsor for failing to protect the physical and mental well-being of an unaccompanied minor placed in their care? Explain the process.
6. On what grounds does HHS claim the Department has no statutory authority to ensure for the well-being of children after they are placed with sponsors? Please explain HHS's legal position. How is this position consistent with the Department's policy to follow up with some unaccompanied children after they are placed with sponsors in limited cases? If HHS has no authority, which agency does? Has HHS discussed this issue with other agencies such as the Department of Justice or the Department of Homeland Security? Explain.
7. Provide all documents and communications referring or relating to background checks, fingerprinting and any other identity verification processes for potential sponsors and/or their household members, including but not limited to internal policies, procedures, memorandum, and emails, from January 2007 to the present.
8. Provide all documents and communications referring and relating to the immunization or communicable disease testing for unaccompanied children, including but not limited to internal policies, procedures, memorandum, and emails, from January 2007 to the present.

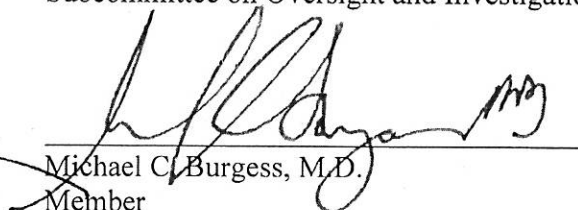
Please provide the requested documents and information to the Committee no later than February 25, 2016. If you have any questions, please contact Emily Felder or Brittany Havens at (202) 225-2927.

Sincerely,


Fred Upton
Chairman


Tim Murphy
Chairman
Subcommittee on Oversight and Investigations


David McKinley
Member

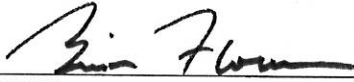

Michael C. Burgess, M.D.
Member



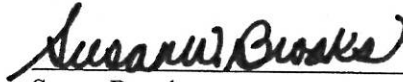
Marsha Blackburn
Member



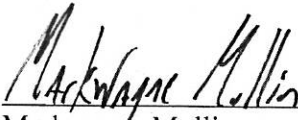
Larry Bucshon
Member



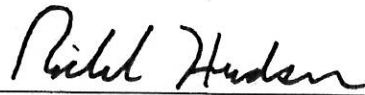
Bill Flores
Member




Susan Brooks
Member



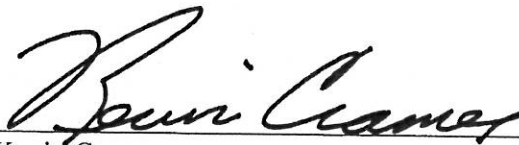
Markwayne Mullin
Member



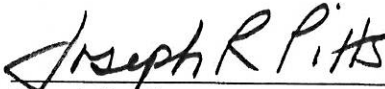
Richard Hudson
Member



Chris Collins
Member



Kevin Cramer
Member



Joseph R. Pitts
Member

cc: The Honorable Frank Pallone, Jr., Ranking Member



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

FEB 26 2016

Assistant Secretary for Legislation
Washington, DC 20201

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for your February 11, 2016, letter regarding the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services' (HHS) Administration for Children and Families (ACF). Secretary Burwell has asked me to respond to you on her behalf. I appreciate your interest in the Unaccompanied Children's Program. The safety and well-being of every child in HHS's care is a priority, and we are continually working to strengthen our program in this regard.

Enclosed please find documents responsive to your request. My staff is working on a more detailed response to the specific questions in your letter.

I hope you find this information helpful. Please let my staff know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, reading "Jim R. Esquea". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jim R. Esquea
Assistant Secretary
for Legislation

Enclosures

cc: The Honorable Tim Murphy, Chairman, Subcommittee on Oversight and Investigations

The Honorable David McKinley

The Honorable Michael C. Burgess, M.D.

The Honorable Marsha Blackburn

The Honorable Larry Bucshon

The Honorable Bill Flores

The Honorable Susan Brooks

The Honorable Markwayne Mullin

The Honorable Richard Hudson

The Honorable Chris Collins

The Honorable Kevin Cramer

The Honorable Joseph R. Pitts

The Honorable Frank Pallone, Jr., Ranking Member



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

MAR 18 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

I am writing in further response to your February 11, 2016, letter regarding the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services' (HHS) Administration for Children and Families (ACF). I appreciate your interest in the Unaccompanied Children Program. The safety and well-being of every child in HHS's care is a priority, and we are continually working to strengthen our program in this regard.

Enclosed please find documents responsive to your request. This is the Department's second production of responsive documents as part of a rolling production. My staff is working on a more detailed response to the specific questions in your letter.

I hope you find this information helpful. Please let my staff know if we can be of further assistance.

Sincerely,

A handwritten signature in dark ink, reading "Jim R. Esquea", is positioned above the typed name.

Jim R. Esquea
Assistant Secretary
for Legislation

Enclosures

cc: The Honorable Tim Murphy, Chairman, Subcommittee on Oversight and Investigations

The Honorable David McKinley

The Honorable Michael C. Burgess, M.D.

The Honorable Marsha Blackburn

The Honorable Larry Bucshon

The Honorable Bill Flores

The Honorable Susan Brooks

The Honorable Markwayne Mullin

The Honorable Richard Hudson

The Honorable Chris Collins

The Honorable Kevin Cramer

The Honorable Joseph R. Pitts

The Honorable Frank Pallone, Jr., Ranking Member



MAR 30 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for your February 11, 2016, letter concerning the operations of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services' (HHS) Administration for Children and Families (ACF). Secretary Burwell has asked me to respond to you on her behalf.

ORR has responsibility for the care and custody of unaccompanied children placed into an ORR care provider facility and manages the process for safe and timely release of unaccompanied children to parents, family members, or other qualified sponsors. ORR is committed to its goals of providing for the safety and well-being of children as well as maintaining the health and safety of the communities, in which these children live. ORR is mindful of the vulnerability of these children and is continually evaluating ways to strengthen the program's safeguards. As described in more detail in the attachment, we share your concern for the safety and well-being of unaccompanied children and the importance of post-release resources and services once children are released to sponsors.

I hope you find this information helpful. As you know, we also have made two productions of responsive documents pursuant to your requests in your February 11, 2016 letter. Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in dark ink, reading "Jim R. Esquea". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Jim R. Esquea
Assistant Secretary for Legislation

cc: The Honorable Tim Murphy, Chairman, Subcommittee on Oversight and Investigations
The Honorable David McKinley
The Honorable Michael Burgess, M.D.

The Honorable Marsha Blackburn
The Honorable Larry Bucshon
The Honorable Bill Flores
The Honorable Susan Brooks
The Honorable Markwayne Mullin
The Honorable Richard Hudson
The Honorable Chris Collins
The Honorable Kevin Cramer
The Honorable Joseph R. Pitts
The Honorable Frank Pallone, Jr., Ranking Member

ATTACHMENT

Background

In 2003, responsibility for the care and placement of unaccompanied alien children transferred from the then-Commissioner of the Immigration and Naturalization Service to the Director of the Office of Refugee Resettlement (ORR). An unaccompanied alien child (hereinafter referred to as “unaccompanied child”) is defined in the Homeland Security Act of 2002 as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and has no parent or legal guardian in the United States available to provide care and physical custody at the time of apprehension.

Since 2003, the ORR Unaccompanied Children’s Program has cared for more than 170,000 children. Unaccompanied children are referred to ORR by other federal agencies, usually the Department of Homeland Security (DHS). ORR’s care and placement of unaccompanied children is governed by federal statutes and consistent with the *Flores* settlement agreement. Generally, ORR provides care for unaccompanied children referred to it through a network of state-licensed, ORR-funded care providers. Unaccompanied children remain in ORR’s care and custody until they are released to a parent, family member, or other sponsor in the United States, are repatriated to their home country, obtain legal status, or turn 18 years old, at which time they are transferred to the custody of DHS.

The number of children referred to ORR for care has grown tenfold since 2009. In the past five years there has been both tremendous growth and fluctuation in the numbers of children the program has served – going from between 7,000 and 8,000 children prior to 2011 to over 24,000 in 2013, over 58,000 in 2014, and over 33,000 in 2015.

In 2015, HHS brought on a new ORR leadership team and increased the number of staff to enhance ORR’s ability to effectively manage the children referred to ORR care. The addition of 71 new staff positions in ORR supported the formation of a new Medical Team tasked with providing enhanced oversight for the medical care children receive while in ORR care; creation of a new Policy Division to focus on strengthening policies and developing regulations to support the care of unaccompanied minors and their release to sponsors; and expanding the Unaccompanied Children’s program Monitoring Team responsible for conducting on-site monitoring of ORR-funded care provider facilities, reviewing grantee compliance and assessing the quality of services at provider facilities.

Care While in HHS Custody

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008) directs that, subject to certain considerations, such as danger to self, danger to others, and risk of flight, unaccompanied children must “be promptly placed in the least restrictive setting that is in the best interest of the child.”¹

¹ 8 U.S.C. § 1232(c)(2)(A).

Pursuant to federal law and consistent with the settlement agreement reached in Flores v. Reno, Case No. CV 85-4544-RJK (C.D. Cal. 1996) (known as the *Flores* settlement agreement), while children are in ORR care, each child receives certain services, including medical, dental, and mental health services; education services; case management services that include services to identify a parent, relative, or other appropriate sponsor; and clinical counseling on a weekly basis.

After the initial placement in an HHS shelter, children are assessed by trained staff on a variety of factors, including to determine if there are any trafficking or other safety concerns, if they have special needs, disabilities or medical or mental health issues; if they have a criminal or juvenile justice background; and if the child is a danger to him or herself, to others, or to the community. Care providers use these screenings, as well as more thorough assessment completed within 5 days of a child entering care, to determine if the child either needs or is eligible for additional services. These assessments determine whether the child requires specialized services; a home study conducted by a grantee case worker, typically a social worker, prior to the child's release to a sponsor (if a sponsor is available); and whether the child is a potential victim of trafficking and therefore eligible for the additional services and legal assistance available to foreign trafficking victims in the United States.

Health Screenings and Care

The safety of the children we care for in this program, and the safety of the American public, is our foremost concern. The Centers for Disease Control and Prevention (CDC) believes that the children arriving at U.S. borders pose little risk of spreading infectious diseases to the general public.²

State-licensed ORR care provider facilities must also meet ORR requirements regarding health, safety, and quality care for children. ORR has always followed CDC guidelines around immunizations and communicable diseases and has made adjustments to procedures as these guidelines have changed.

If children are determined to be infectious with a communicable disease of public health concern while at the Border Patrol station, ORR will locate a program that is able to properly isolate them. Following established infectious disease protocols, children who are identified as exposed to communicable diseases of public health concern may be treated prophylactically to halt the course of the disease, tested to determine immunity to the disease, and/or placed in programs that have the capacity to medically isolate the child.

Upon their arrival into one of the HHS shelters, children are provided with a complete medical screening and vaccinations, if necessary, within 48 hours. The initial screen includes a general

² CDC Factsheet on Unaccompanied Children: Health Information for Public Health Partners, available at <http://www.cdc.gov/usmexicohealth/pdf/unaccompanied-children-factsheet.pdf>.

health assessment, including a mental health screening and a review of vaccination history. Countries in Central America where most of the unaccompanied children are from (Guatemala, El Salvador, and Honduras) have childhood vaccination programs, and most children have received some or all of their recommended childhood vaccines. However, they may not have received a few vaccines, such as chickenpox, influenza, and pneumococcal vaccines. As a precaution, if a child's vaccinations are not up-to-date based on vaccination records or a vaccination record is not located, it is ORR's policy to provide the child with all CDC recommended vaccinations, including varicella, measles, mumps, rubella, meningococcal disease, and pertussis, per CDC guidelines. All of the children receive a tuberculosis test, and girls over age 10 receive a pregnancy test.

If a communicable disease manifests after a child is in ORR's custody, ORR follows established infectious disease protocols, and ensures the child receives appropriate medical care and treatment is completed. ORR care providers report to local and state health departments following established legal and regulatory requirements.

Since June 2015, ORR has released monthly reports summarizing diseases of public health significance diagnosed in unaccompanied children in its care. These reports were provided to the Committee on February 26, 2016.

Monitoring Care Provider Grantees

Through the Unaccompanied Children program's Monitoring Team, ORR implemented a comprehensive biennial on-site monitoring program in 2014. In addition to this comprehensive monitoring conducted by ORR Project Officers, ORR staff conduct routine and non-routine site visit monitoring, desk monitoring, and contract compliance monitoring. ORR expects to complete the cycle of biennial monitoring by the end of FY2016.

ORR currently is examining opportunities for further improvement in monitoring documentation and identifying best practices for its monitoring protocols for the Unaccompanied Children's Program.

Process for Safe and Timely Release of Unaccompanied Children to Sponsors

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008) directs that, subject to certain considerations, such as danger to self, danger to others, and risk of flight, unaccompanied children must "be promptly placed in the least restrictive setting that is in the best interest of the child."³ Pursuant to that requirement and the policies and procedures described below, whenever possible, ORR works to place children with a qualified parent, family member, or family friend ("sponsor"). ORR's sponsor assessment and release decision process requires coordination among care provider staff, nongovernmental third-party reviewers (Case Coordinators), ORR staff, other federal agencies, and stakeholders. ORR,

³ 8 U.S.C. § 1232(c)(2)(A).

however, makes the final decision regarding an unaccompanied child's placement with a potential sponsor.

Identification of Potential Sponsors

As soon as an unaccompanied child enters ORR's care, ORR begins the process of locating family members and others who may be qualified to care for the child. Parents, other relatives, or close family friends can apply to have the child released to their care.

A case manager at the ORR-funded care provider facility interviews the child as well as parents, legal guardians, and/or family members to identify qualified sponsors. The *Flores* settlement agreement establishes an order of priority for sponsors with whom children should be placed, except in certain circumstances. The first preference for placement is with a parent of the child. If a parent is not available, the preference is for placement with the child's legal guardian, and then to various adult family members, and then to family friends recommended by the family if a parent, guardian or other close relative is not an available and appropriate sponsor. ORR follows this order of priority in making placement decisions.

Application Process

Within 24 hours of identifying a potential sponsor, a case manager at the care provider facility sends the sponsor a packet with the family reunification application and related documents. All potential sponsors must complete an application.⁴ The application requires the potential sponsor to provide basic biographical and contact information; his or her relationship to the child; the identity of all household occupants (by name, age, relationship to the child, and relationship to the sponsor); his or her plans to support the minor financially; information regarding any serious contagious diseases household occupants have; information regarding whether the potential sponsor or any household member has a criminal history, including any abuse, neglect, or abandonment of a minor offenses (answering yes to these questions requires the potential sponsor to submit supporting documents related to the incident); and a sponsor care plan including contact information for another individual to care for the minor in the event the sponsor becomes unable to care for the minor (e.g., if they are hospitalized, leave the United States, etc.). The case worker is available to help the potential sponsor complete the application.

The potential sponsor is required to sign the application, affirming that the information contained in the application is correct, and that the potential sponsor will abide by the care instructions in the *Sponsor Care Agreement*.

Evaluation of the Suitability of the Sponsor

In addition to completing and signing the Family Reunification Application, potential sponsors must provide information and supporting documentation. HHS is statutorily required to verify a potential sponsor's identity and their relationship, if any, to the child in ORR's care. In addition, ORR considers the child's parent's or legal guardian's perspective on the child's potential release to a particular sponsor and to identify potential risk factors or other safety

⁴ A copy of the application is available at <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services>.

concerns.

Verification of Identity and Relationship

In accordance with TVPRA of 2008, ORR requires verification of a potential sponsor's identity and relationship, if any, to the child before placing him or her with a sponsor. To meet this requirement, ORR requires its grantees to complete and document a thorough assessment of the child's past and present family relationships, and relationships to unrelated potential sponsors. If the child is not being released to his parent or legal guardian, the care provider considers the child's parent or legal guardian's perspective on the child's potential release to a particular sponsor.

To prove a sponsor's identity, ORR requires all prospective sponsors to submit one form of government- issued photo identification and a copy of their birth certificate. To prove the sponsor's relationship to the child, ORR requires certain documentation depending on the relationship of the sponsor to the child. ORR accepts foreign identity cards and birth certificates to establish proof of identity and relationship. If there is a question as to the authenticity of the documents, ORR will work with the issuing country's consulate or embassy to authenticate the documents.

All potential sponsors with familial relationships to the unaccompanied child must submit a birth certificate, and, if necessary, a trail of birth certificates, to prove the relationship. For instance, if a child's grandparent is potentially sponsoring the child, in addition to the grandparent's birth certificate, the potential sponsor would be required to provide the child's parent's birth certificate to show evidence of a familial relationship between the grandparent and the unaccompanied child. Similarly, potential step-parent sponsors must submit a trail of birth certificates, marriage certificates, and court orders to prove the relationship. Potential legal guardian sponsors must submit a copy of a court's guardianship order.

Non-related potential sponsors must submit an explanation of their relationship to the unaccompanied child or the child's family, which must be confirmed by the unaccompanied child and the child's family, either via interview or through notarized documents.

ORR is working with federal partner subject matter experts to identify and incorporate enhanced interview and document verification techniques into the potential sponsor assessment process.

Background Checks and Sponsor Assessment

Potential sponsors for unaccompanied children are required to undergo background checks and complete a sponsor assessment process. ORR is continually reviewing its policies and procedures to strengthen the protections for children in its care, meet the standards for the best interest of children, and to adapt to changing circumstances that directly impact the program. ORR has recently enhanced its background check policy, requiring additional checks for potential sponsors and others who are likely to come into contact with the child post-release.

All potential sponsors and individuals identified in the sponsor care agreement (the "back-up" sponsor identified by the potential sponsor who will care for the child in the event the potential

sponsor is unable to), must complete a criminal public records background check, based on their name and address, and a sex offender registry check.

ORR-funded care providers contract with vendors to conduct these background searches through hundreds of public databases, including county criminal records; state criminal records; state sex offender registries; international and federal national security sources, such as INTERPOL Most Wanted, United Nations Consolidated Sanctions List, European Union Terrorism Sanctions List, State Department's Foreign Terrorist Organizations List and Terrorist Exclusion List, National Counterterrorism Center's Comprehensive Terrorist List, America's Most Wanted Fugitive List, Federal Fugitives List, Immigrations and Customs Enforcement's Most Wanted, and Department of Labor's Forced and Child Labor List; and federal programs exclusions, enforcement, and sanctions lists (e.g. HHS' Office of the Inspector General Exclusions list). Case managers at ORR care providers conduct sex offender registry checks on the potential sponsors and individuals identified in the sponsor care plan.

Additionally, a fingerprint background check is required whenever the potential sponsor is not a parent or legal guardian. When the potential sponsor is a parent or legal guardian, a fingerprint background check is required when there is a documented risk to the safety of the minor, the minor is especially vulnerable, and/or the case is referred for a home study.⁵ Fingerprint checks are also required for individual sponsors, and individuals identified in a sponsor care plan, in any case where criminal history is revealed by the criminal public records check or sex offender registry check. The fingerprints are cross-checked with the Federal Bureau of Investigation's (FBI) national criminal history and state repository records, which includes DHS arrest records. For an unresolved criminal arrest or issue still in process, ORR-funded care providers may conduct an additional state or local check to assist in locating arrest records or other criminal offense details.

ORR funded care providers conduct a child abuse and neglect (CA/N) registry check in any case where a home study is conducted or where a special concern is identified. Additionally, as of March 2015, care providers conduct CA/N checks in any case in which the potential sponsor is unrelated or distantly related to the unaccompanied child. ORR also conducts CA/N checks of adult caregivers identified in a sponsor care plan in any case where a special concern is identified. CA/N checks are obtained on a state by state basis for all localities in which the potential sponsor has resided in the past five years.

In the event that a background check of a potential sponsor or individual identified in a sponsor care plan, reveals a criminal history or a safety issue, the care provider evaluates this information and works with the potential sponsor to obtain detailed information on any charges or adjudications that have bearing on a sponsor's ability to provide for the child's physical and mental well-being.

⁵ In November 2013, ORR revised its background check policy with regard to fingerprinting parents and legal guardians to require fingerprint-based background checks only in certain circumstances. All parents and legal guardians continued to be subject to public records criminal background checks and, as of January 2016, sex offender registry checks. This policy is designed to reunite children with their parents, which is typically in the child's best interest, quickly and safely.

In accordance with TVPRA of 2008, each child also is screened by a case worker during the initial ORR intake process to determine, among other things, if there are indications that he or she may be a victim of trafficking or abuse or have a disability, such that additional services might be appropriate. Staff at the ORR-funded care provider conduct a more thorough assessment, covering biographic, family, legal/migration, medical, substance abuse, and mental health history, within 5 days of the child's placement into ORR care and custody. This information is documented in each child's case file and periodically reviewed as necessary throughout the child's stay in ORR custody. A child who is identified as a victim of a severe form of trafficking in persons, a victim of physical or sexual abuse that threatened the child's health or welfare, or as having special needs based on these assessments is not placed with a sponsor until a home study is conducted and a determination is made that the child will be safe in that home. ORR also requires home studies in some other cases, as described below.

Review of Household Members

ORR's longstanding policy has been to conduct background checks on other individuals living with the potential sponsor ("household members") when a home study is conducted. ORR recently revised this policy so that all household members are subject to background checks in all cases. Specifically, public records checks and sex offender registry checks are now conducted for all adult household members. Fingerprint background checks of the Federal Bureau of Investigation's (FBI) national criminal history and state repository records, which includes DHS arrest records, are conducted for adult household members where a public records check reveals possible disqualifying factors; or where there is a documented risk to the safety of the unaccompanied child, the child is especially vulnerable, and/or the case is being referred for a mandatory home study. Child Abuse and Neglect (C/AN) checks are conducted of adult household members in any case where a special concern is identified. Finally, state criminal history repository checks and/or local police checks are conducted adult household members on a case-by-case basis when there is an unresolved criminal arrest or issue that is still in process.

Home Studies

The TVPRA of 2008 also sets forth requirements with respect to performing home studies prior to the release of a child to a sponsor. A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being. The process includes background checks of the sponsor and adult household members, home visit(s), in-person sponsor interview and possibly interviews with other household members, and post-release services. By statute, ORR is required to perform a home study to determine that a prospective sponsor's home is safe when:

- The child is a victim of a severe form of trafficking in persons;
- The child is a special needs child with a disability (as defined in 42 U.S.C. § 12102);
- The child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or

- The proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence.⁶

As of July 27, 2015, home studies are also required for all children who are being released to a non-relative sponsor who has previously sponsored or proposes to sponsor more than one child to whom the sponsor is not related. Additionally, effective July 1, 2015, ORR requires mandatory home studies for all children ages 12 and under being released to non-relative or distantly related sponsors through a pilot program. In addition, ORR recently established a policy under which ORR care providers can recommend home studies for ORR approval in instances not required by TVPRA or existing ORR policy.

Final Release Decisions

The release decision process involves multiple layers of reviews and recommendations by care provider staff, non-governmental independent third-party reviewers (Case Coordinators), and ORR Federal Field Specialists (FFS). The ORR FFS makes the final decision regarding an unaccompanied child's placement with a sponsor.

The decision is based on the best interest of the child and takes into account the totality of the circumstances. ORR will deny release to a potential sponsor if the potential sponsor is not willing or able to provide for the child's physical or mental well-being; the physical environment of the home presents risks to the child's safety and well-being; or release of the unaccompanied child would present a risk to him or herself, the sponsor, household, or the community.

ORR's policies provide guidance regarding the types of criminal history that may be a basis for denying release. Recently, ORR has enhanced its policies, requiring release to be denied to a potential sponsor who is not a parent or legal guardian if the potential sponsor or a member of the potential sponsor's household 1) has been convicted of certain felonies, including a crime against a child, a violent crime, drug-related offenses, or trafficking; or has a criminal history or pending criminal charges or child welfare adverse findings from which one could reasonably infer that the sponsor's ability to ensure the safety and well-being of the child is compromised; or 2) has certain substantiated adverse child welfare findings, for example, severe or chronic abuse and neglect.⁷ Similarly, ORR will reject any sponsor care plans that identify an adult caregiver who has any of the disqualifying criteria. It is not the practice of ORR to place children with sponsors who have serious criminal convictions.

Care provider Case Managers gather the necessary information and documentation, regularly meet with and conduct ongoing assessments of the children, communicate with the potential sponsors and any relevant stakeholders, such as local legal service providers and attorneys of record, Child Advocates, post-release and home study providers, and other federal agencies, and assess potential sponsors to formulate release recommendations. The Case Manager's role is also to ensure that information is gathered or shared with the appropriate staff and stakeholders

⁶ 8 U.S.C. § 1232(c)(3)(B) (also requiring that ORR conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted).

⁷ A full list of disqualifying criteria may be found in the ORR Policy Guide § 2.7.4, available at <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied>.

during the sponsor assessment process. The Case Manager provides weekly status updates to the unaccompanied child's Case Coordinator and FFS on the progress in achieving a safe and timely release with family members, as well as potential challenges that may delay a release. The Case Manager informs other stakeholders of the progress of a child's case, including notification that an unaccompanied child may not have a potential sponsor, and any final release decisions. Case Managers, in collaboration with the FFS and Case Coordinator, also work with law enforcement officials regarding an unaccompanied child's pending release if the minor has outstanding criminal charges or other issues.

Case Coordinators are non-governmental contractor field staff assigned to one or more care providers primarily to review unaccompanied children cases and provide transfer and release recommendations to ORR staff. The Case Coordinator is responsible for integrating all areas of assessment from the Case Manager and other stakeholders into a release plan that will provide for the unaccompanied child's physical and mental well-being. After staffing and reviewing a case, Case Coordinators also make a release recommendation. If there is a disagreement between the Case Manager and the Care Provider regarding a particular recommendation or the case is particularly complex, then the case will be elevated to the ORR/FFS for further guidance and technical assistance.

FFSs are located regionally throughout the country and assigned to a group of care providers within a region. FFSs coordinate all aspects of a child's case with care provider staff, Case Coordinators, stakeholders, and other federal agencies. With regard to the release process, FFSs review the recommendations of the Case Manager, Case Coordinator, the home study provider, if applicable, and any other stakeholders before providing final transfer and release decisions for ORR. FFSs also make final decisions regarding whether home studies are conducted and/or post-release services are provided.

Additionally, FFSs oversee care providers to ensure all services, policies, and procedures are properly provided and implemented, providing guidance, direction, and technical assistance as needed. They also serve as a liaison to local stakeholders, including other federal agencies, local legal service providers, local communities, and Child Advocates.

Planning for Post-Release

After ORR goes through the extensive process of assessing a sponsor and making a decision to release a child, it is ORR's goal that the sponsorship be successful for the child. A key component of that success requires the sponsor to fully understand, prior to the child being released, his or her obligations toward the child. Throughout the release process, care providers work with the child and sponsor so that they can plan for the child's needs after he or she is released to a sponsor. Additionally, as described above, the sponsor agrees to comply with the provisions of the *Sponsor Care Agreement* as part of the application process. The *Sponsor Care Agreement* sets forth the sponsor's responsibilities and clearly communicates ORR's expectations. Specifically, the *Sponsor Care Agreement* describes provisions of the custodial arrangement that the sponsor agrees to comply with while the minor is in their care; for example, providing for the physical and mental well-being of the minor, notifying local law enforcement and/or child protective services if the minor has been or is at risk of being abused, abandoned, neglected or maltreated, or has disappeared. Additionally, the sponsor must notify relevant

agencies of any change of address or phone number and ensure the minor's presence at all future proceedings before DHS's U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice's Executive Office for Immigration Review (EOIR).⁸

The Sponsor Handbook also outlines the responsibilities for obtaining legal guardianship, finding support to address traumatic stress, and keeping the child safe from child abuse, neglect, trafficking and exploitation. The Handbook reiterates the importance of continuing with immigration proceedings and includes links to EOIR's website and forms. The case manager will review this information with the sponsor prior to release, as well as discuss any additional needs that may be particular to the child.

ORR Activities After a Child is Released to a Sponsor

HHS's longstanding view across administrations is that, under the authorities governing the Unaccompanied Children Program, once a child is released to a sponsor, ORR's legal and physical custody terminates.⁹ But the fact that its custody ends upon release does not mean that ORR's commitment to providing resources, connecting children to services, and protecting vulnerable children from abuse or exploitation ends. ORR has authorities that permit it to provide a range of services and resources post-release, and it makes use of that authorization to

⁸ A copy of the Sponsor Care Agreement is available at <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services>.

⁹ ORR relies on the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), to provide the contours of the Unaccompanied Children Program, which it operates consistent with the *Flores* Settlement. The authorities and the resources given to the Unaccompanied Children Program in ORR set forth a system that is intended to be temporary in nature, with a focus on caring for children while in ORR's physical custody, and releasing children to appropriate sponsors. Additionally, if Congress had intended ORR's legal custody to continue after a child is released to a sponsor, the TVPRA would not have needed certain of its post-release provisions. If HHS had continuing legal custody post-release, for example, HHS would necessarily have the authority and responsibility to provide services to the child after release. Instead, Congress specifically required follow-up services in those limited cases where a home study was conducted, and it authorized follow-up services for certain other children with mental health or other needs. In addition, section 235(c)(5) of the TVPRA (8 U.S.C. § 1232(c)(5)) discusses legal services for children who "are" in the custody of HHS as well as those who "have been in the custody of the Secretary."

This interpretation of the TVPRA is consistent with the *Flores* settlement agreement as well. Like the TVPRA, the *Flores* agreement contains references to the "release" from government custody, and it specifically distinguishes between custody and releases from custody. Paragraph 14 of the agreement states that the release of a minor is a release from "custody." Paragraph 19 states that in cases in which the former-Immigration and Naturalization Service (INS) did not release a minor, the minor "shall remain in INS legal custody." Use of the word "remain," shows that legal custody continued while the minor was held by INS in a detention facility or some other type of facility, such as a licensed program. However, once a release occurred, the minor no longer "remained" in legal custody. Taken together, these examples support the conclusion that the Unaccompanied Children Program's approach to legal custody is consistent with the statute and Congressional intent.

If the intent of the Congress had been for the Unaccompanied Children Program to retain legal custody over the children after their release to sponsors, the program would have needed to be structured and resourced in a very different way. The program is not structured in a manner similar to state procedures for child foster care, in which custody of the child is transferred to the state after a judicial proceeding and the child is placed with a foster parent selected and licensed by the state. State child foster care systems include, for example, foster care maintenance payments and payments for health care expenditures, which the Unaccompanied Children Program does not have the authorization or funding to provide.

establish policies and procedures that, among other things, are intended to protect those children that may be vulnerable to abuse or exploitation after they are released from ORR's care. Through these services and resources, if any of ORR's provider grantees or staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, state licensing requirements, and federal laws and regulations for reporting to local child protective agencies and/or law enforcement.

Under the TVPRA of 2008, ORR offers post-release services in cases where there has been a home study.¹⁰ Additionally, the TVPRA provides that ORR may provide these follow-up services in cases involving children with mental health or other needs that could benefit from ongoing assistance from a social welfare agency.¹¹ Under this authority, in addition to providing post-release services on a case by case basis, in July 2015, ORR expanded post-release services to all unaccompanied children released to a non-relative or distant relative sponsor and children whose placement has been disrupted or is at risk of disruption within 180 days of release and the child or sponsor has contacted the ORR Help Line. Participation in post-release services is a voluntary choice by the sponsor and unaccompanied child; however, a sponsor declining post-release services prior to a final placement decision may be a factor considered in determining whether the child's basic needs would be met by that sponsor. If a sponsor declines post-release services after the child has been placed with them and the ORR grantees or staff have reason to believe that a child is unsafe, they comply with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.

Post-release services are intended to help link the child and/or the sponsor with community services or other on-going assistance. Post-release service providers coordinate referrals to supportive services in the community where the unaccompanied child resides and provide other child welfare services, as needed. Post-release services can occur until the minor attains 18 years of age or during the pendency of the child's removal proceedings. In the event that a post-release service case worker finds the home unsafe, he or she is required under state and local laws to report those conditions to local child protective services, and to local law enforcement if the child is in immediate danger.

Care providers must conduct a Safety and Well Being Follow Up Call with an unaccompanied child and his or her sponsor 30 days after the release date. The purpose of the follow up call is to determine whether the child is still residing with the sponsor, is enrolled in or attending school, is aware of upcoming court dates, and is safe. The care provider must document the outcome of the follow up call in the child's case file, including if the care provider is unable to contact the sponsor or child after reasonable efforts have been exhausted. If the follow up call indicates that the sponsor and/or child would benefit from additional support or services, the care provider refers the sponsor or child to the ORR Help Line.

After a child has been released, the ORR Help Line provides unaccompanied children a resource for safety-related concerns, as well as sponsors a resource for assistance with family problems

¹⁰ 8 U.S.C. § 1232(c)(3)(B).

¹¹ *Id.*

and child behavior issues, referrals to community providers, and assistance finding legal support and enrolling unaccompanied children in school. Every child released to a sponsor is given a card with the call center's phone number.

ORR is continually working with its Federal partners to identify additional ways to strengthen the resources and protections available to children and their families post-release.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 25, 2016

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell,

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining the operations of the Office of Refugee Resettlement (ORR). The Committee is specifically focused on the treatment of unaccompanied children when in the care of the Department of Health and Human Services (HHS).

Since 2011, over 129,000 minors have been apprehended at the border and placed in temporary ORR custody.¹ In FY 2014, the number of unaccompanied minors increased dramatically as over 57,000 children were placed in the care of ORR, and numbers soared once again this fall.² News reports have called into question the health and well-being of unaccompanied children both while in the custody of ORR and after ORR places children into the homes of sponsors. For example, a series of articles in the *Houston Chronicle* detailed numerous instances of serious abuses and violations of children in custody of organizations contracted with the federal government.³ A recent article in the *Washington Post* tells the story of an unaccompanied child placed with sponsors in central Ohio, who engaged in human trafficking, forcing the child to work 12 hours a day on an egg farm.⁴

¹ Administration for Children and Families, Department of Health and Human Services, Fact Sheet, (last visited Jan. 28, 2016), available at: https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf

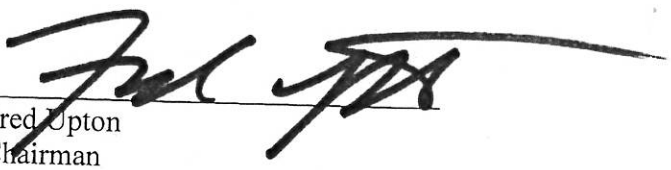
² *Id.*

³ See, e.g., Susan Carroll, *Crossing Alone: Children Fleeing to U.S. land in shadowy system*, HOUSTON CHRONICLE May 24, 2014; see also Susan Carroll, *Unaccompanied Children in country illegally still lack federal protection*, HOUSTON CHRONICLE, May 29, 2014.

⁴ Abbie VanSickle, *Overwhelmed federal officials released immigrant teens to traffickers in 2014*, THE WASHINGTON POST, Jan. 26, 2016.

In light of these abuse allegations, the Committee is concerned about the health and well-being of children in ORR custody, especially given the unprecedented volume of unaccompanied children entering the country this year. The Committee requests copies of all Significant Incident Reports and other documents in the custody of ORR, ORR grantees, and/or ORR contractors that relate to allegations of abuse of children in ORR's care or custody, from January 1, 2011 to the present. Please provide these documents to the Committee no later than March 10, 2016. Additionally, the Committee requests that you continue to produce such documents on a monthly basis until December 2016. If you have any questions, please contact Emily Felder or Brittany Havens at (202) 225-2927.

Sincerely,


Fred Upton
Chairman

cc: The Honorable Frank Pallone, Jr., Ranking Member